

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

In the Matter of the Adoption of
Interim Guidance for Permitting
Large Electric Power Generating Plants
And High Voltage Transmission Lines

**ENVIRONMENTAL QUALITY
BOARD'S FINDINGS OF FACT,
CONCLUSIONS, AND ORDER
ADOPTING POWER PLANT
SITING INTERIM GUIDANCE**

The above-entitled matter came before the Minnesota Environmental Quality Board at a regular meeting on October 18, 2001, to consider the adoption of interim guidance for the processing of applications for site permits for large electric power generating plants and route permits for high voltage transmission lines under the Power Plant Siting Act as amended by the Energy Security and Reliability Act of 2001. Based on a review of the 2001 amendments and the existing rules of the MEQB for siting plants and routing lines and the consideration of comments by various interested parties, the Minnesota Environmental Quality Board hereby makes the following:

FINDINGS OF FACT

1. In May 2001, the Minnesota Legislature passed the Energy Security and Reliability Act of 2001. The Act is reported in Minnesota Session Laws 2001, chapter 212. The Act amended the Power Plant Siting Act, Minnesota Statutes, sections 116C.51 to 116C.69, in substantial ways. The Act became effective on August 1, 2001.
2. The process for considering applications for permits for Large Electric Power Generating Plants and High Voltage Transmission Lines was changed by the Energy Security and Reliability Act. Some of the requirements in the EQB's rules on power plant siting, Minnesota Rules chapter 4400, are no longer applicable. In addition, the Act created an alternative process for administering permit applications for certain smaller size projects, and the existing rules do not address this process.
3. The MEQB has begun the rulemaking process to amend the existing power plant siting rules. Draft rules have been made available to the public and a notice soliciting public comments on the draft rules was published in the State Register on September 10, 2001. The public has been given until December 7, 2001, to submit comments on the draft rules. The draft rules have also been published on the MEQB webpage.
4. It will take a number of months after the public comment period closes on December 7 to complete the rulemaking process and to promulgate final rules. In the meantime, a number of projects are likely to come forward to the MEQB for permitting. A 225 megawatt cogeneration facility near Grand Rapids, Minnesota, has been announced by Rapids Power LLC, and a certificate of need has been applied for from the Public

Utilities Commission for the project. Xcel Energy, Inc. has announced a new 345 kilovolt high voltage transmission line in southwestern Minnesota. The MEQB is aware of other projects that are in the planning stages for which a permit from the MEQB will be required.

5. The MEQB will not be able to complete the rulemaking process to amend the power plant siting rules before permit applications for projects are submitted to the MEQB. The MEQB will be required, nonetheless, to process these applications and that will be done without having final rules in effect.
6. The adoption of interim guidance will provide assistance to applicants, to the general public, and to the agency itself in processing these permit applications until such time as the MEQB can adopt final rules. It is common for administrative agencies to act on permit applications and to conduct other administrative duties without first having adopted rules to apply to the statutory programs.
7. The draft rules that the MEQB has prepared and placed on public notice address all aspects of the permitting process, from what to include in the application, to the procedures to follow, to the criteria to apply in making a final decision, to the conditions to include in the permit.
8. The draft rules maintain those requirements from the existing rules that remain pertinent to the permitting of projects under the new statutes. The draft rules also lift from the Energy Security and Reliability Act the statutory requirements that are directly applicable to the permitting process.
9. The draft rules provide for public input into the permitting process in a number of ways. There are requirements for public notice of pending projects and opportunities for public meetings and public hearings.
10. The draft rules provide for evaluation of the public health and environmental impacts of all proposed projects. In accordance with the statutory requirements, either an Environmental Impact Statement or an Environmental Assessment will be prepared on all projects permitted by the MEQB.
11. The MEQB made the draft rules available for review by the utility industry, various interest groups, and the general public several months ago. No person or organization has registered any complaints with the MEQB about any of the provisions in the draft rules.
12. The MEQB is fully aware that the draft rules will not have the force and effect of law and the MEQB will not attempt to rely on them as such. The MEQB will continue to pursue the full rulemaking process to adopt rule amendments in accordance with changes in the Power Plant Siting Act.

13. Applicants and interested persons will have the opportunity to contest any provision of the interim guidance in a specific permit proceeding. The record will have to support any action the MEQB takes on a particular permit request.

Based on these Findings of Fact, the Environmental Quality Board makes the following:

CONCLUSIONS OF LAW

1. Any of the foregoing Findings of Fact that should more properly be designated a Conclusion is hereby adopted as such.
2. It is permissible for an agency like the Minnesota Environmental Quality Board, which has been directed by statute to issue permits for proposed projects, to process permit applications for Large Electric Power Generating Plants and High Voltage Transmission Lines without first promulgating rules for such purpose.
3. The draft rules prepared by the MEQB provide a reasonable and appropriate mechanism for handling permit applications for such facilities.
4. The draft rules are consistent with the Energy Security and Reliability Act of 2001.

Based on the foregoing Findings of Fact and Conclusions of Law, the Environmental Quality Board makes the following:

ORDER

The Minnesota Environmental Quality Board hereby adopts the attached draft rules as interim guidance to apply to the processing of permit applications for Large Electric Power Generating Plants and High Voltage Transmission Lines under the Power Plant Siting Act, as amended by the Energy Security and Reliability Act of 2001. The MEQB further orders that this interim guidance shall remain in effect until such time as rule amendments to the power plant siting rules become effective or the MEQB takes other action regarding the interim guidance.

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

Dated: _____

GENE HUGOSON
CHAIR